

SECURITY RESOURCES CORP.

IBLA 83-252

Decided January 31, 1983

Appeal from issuance by the Nevada State Office, Bureau of Land Management, of noncompetitive oil and gas leases containing stipulations. N 35540, N 35541, N 35542, N 35543, and N 35545.

Leases vacated and cases remanded.

1. Notice: Generally -- Oil and Gas Leases: Noncompetitive Leases --
Oil and Gas Leases: Stipulations

Where a noncompetitive over-the-counter oil and gas lease issued without notice to the offeror of an additional stipulation, the lease is not binding upon the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM state office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

APPEARANCES: Laura L. Payne, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Security Resources Corporation has appealed from the issuance by the Nevada State Office, Bureau of Land Management (BLM), of five leases, dated June 1, 1982, purportedly accepting appellant's noncompetitive oil and gas lease offers, N 35540, N 35541, N 35542, N 35543, and N 35545, but imposing stipulations previously unseen by the offeror.

Specifically, on February 26, 1982, appellant filed five noncompetitive oil and gas lease offers, entitled "Offer to Lease and Lease for Oil and Gas" (Form 3110-1 (March 1977)), for land situated in Ts. 45, 46 N., R. 43 E., Mount Diablo meridian, Humboldt County, Nevada, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). On May 17 and 18, 1982, BLM signed the lease offers, thereby issuing the leases, each effective

June 1, 1982, but stamped on the face of each lease that it was "subject to the attached stipulation." The stipulations referred to were appended to the executed lease forms and returned to appellant, which had not previously seen them. The stipulations are entitled "Protection of the Environment" (Form N-1), attached to all five leases, and "Wilderness Protection" (Form N-2), attached to lease N 35543.

By notices received by BLM June 14, 1982, Security Resources Corporation appealed BLM's execution of the lease offers with the addition of the above-mentioned stipulations and, in its statement of reasons, has requested revocation of the leases and an opportunity to discuss the need for the stipulations with BLM.

Appellant argues that the imposition of the stipulations was contrary to regulation 43 CFR 3109.2-1, and the special instructions on the lease form itself. Item 5(c) of the special instructions states that whenever stipulations other than those set forth in time 5(c) are deemed necessary, the lessee will be required to agree to them before issuance of the lease. Appellant contends that the stipulations arbitrarily attached to the leases are unreasonable, especially the Notice to the Lessee that by accepting the lease, the lessee acknowledges that restrictive measures may be applied by BLM for protection of the environment at any time an application for permission to drill (APD) is submitted. Appellant suggests that the stipulation creates an uncertainty as to what rights, if any, the lessee obtains by the lease. Appellant points out that BLM could conclude, at the time of filing an APD, no surface occupancy of the lease is necessary for protection of the environment, and lessee would have no recourse because it had "acknowledged that restrictive measures may be applied."

Appellant suggests that the requirement that "lessee take all mitigating actions required by the lessor to prevent" soil erosion, pollution, etc., are far more restrictive than those set forth in section 2(q) of the lease itself.

Appellant contends the requirements that lessee take all necessary action to prevent seismic activity or noise emissions is so ambiguous that lessee should not be required to assume a reasonable interpretation by BLM in the future. Furthermore, 43 CFR Subpart 3045 provides regulations for geophysical exploration, including seismic operations, on public lands by those other than a lessee, because the lease does not give the lessee the exclusive right to conduct geophysical operations, including seismic activity, on the leasehold. The prevention of noise emission could be construed by BLM to prohibit the use of any motorized vehicle or mechanical equipment on the lease. Appellant is unaware of any statute which requires such stringent control.

Appellant, in sum, contends the notice is overly broad, vague, and susceptible of highly restrictive application, so that it is impossible to assess the risk that reasonable and necessary exploration and production activities will be impeded or prevented by the notice.

Appellant submits that the wilderness stipulations imposed upon lease N 35543 do not clearly spell out that they are applicable only to the subdivisions set forth on the stipulation form. Appellant concedes that to the extent land described in offer N 35543 lies within the North Fork Little

Humboldt Wilderness Study Area (WSA), the nonimpairment strictures of the wilderness protection stipulation are applicable, but the stipulation does not clearly set out that that is the only area to which the stipulation applies.

Finally, appellant contends that the Board has previously ruled that BLM may not impose stipulations on a lease without notice to the offeror. *Emery Energy, Inc.*, 64 IBLA 175 (1982). ^{1/}

[1] As pointed out in *Emery Energy, Inc.*, *supra* at 286, the Board, in *Duncan Miller (On Reconsideration)*, 39 IBLA 312 (1979), affirmed a previous order by the Board, dated August 14, 1978, which held that BLM was required to notify an offeror of an additional stipulation, not specifically mentioned in the notice of availability, prior to issuance of the lease. We stated in *Miller*:

While it is within the authority of BLM to reserve the right to impose additional stipulations as a condition precedent to the issuance of an oil and gas lease, we think it is obvious that such a stipulation must be presented to the prospective lessee for acceptance prior to the issuance of the lease. Where such additional stipulations are not acceptable to the lessee, he has the right either to decline to accept the lease or to seek review of the inclusion of such specific stipulation on the grounds that it is arbitrary, capricious, or represents an abuse of discretion by BLM.

39 IBLA at 313, quoting from the order dated August 14, 1978. The logical extension of such reasoning, therefore, is that a lease issued without notice to the offeror, prior to its issuance, of an additional stipulation is not binding upon the offeror and is without effect, in the absence of acceptance of the stipulation.

As we said in *Emery Energy, Inc.*, *supra* at 287, "the question then is whether appellant was adequately notified of the disputed stipulations prior to issuance of the leases. There appears to be no question that the "Offer to Lease and Lease for Oil and Gas" (Form 3110-1 (March 1977)) submitted by appellant in each case made no reference to the disputed stipulations when filed."

Item 5(c) on the face of the lease offer form provides: "Offeror accepts as a part of this lease, to the extent applicable, the stipulations provided for in 43 CFR 3103.2." In the present codification, the pertinent regulation is 43 CFR 3109.4-2. The substance of the regulation is the same, however, and its basic content is set forth under the comparable item 5(c) of the "Special Instructions" on the reverse side of the lease offer form, as follows:

When applicable the stipulations referred to will be made a part of this lease and will be furnished the lessee with the lease when issued. The forms covering them with a brief description are as follows: 3102 Stipulations for lands where the

^{1/} *Sustained in Emery Energy, Inc. (On Reconsideration)*, 67 IBLA 260 (1982).

surface control is under the jurisdiction of the Department of Agriculture; 3103-1 Lands potentially irrigable, lands within the low limits of a reservoir site, lands within the drainage area of a constructed reservoir; 3500-1 Lands withdrawn for power purposes; and 3120-3 Wildlife Refuge, Game Range, and Coordination Lands. Whenever other stipulations are necessary, lessee will be required to agree to them before the issuance of the lease." [Emphasis added.]

Reference to additional stipulations in the notice of availability, in the case of simultaneous oil and gas lease applications, and in the notice of sale, in the case of competitive bids, is deemed to be sufficient notice to the public that the leases issued in response thereto will be subject to the stipulations. See Palmer Oil & Gas Co., 43 IBLA 115, 117 (1979); Duncan Miller (On Reconsideration), *supra*. In the case of simultaneous oil and gas lease applications, Departmental regulations specifically provide for the posting of a list of available lands "on the first working day of January, March, May, July, September and November." 43 CFR 3112.1-2. The list "shall include a statement as to, and a copy of, any standard or special stipulation applicable to each parcel." *Id.* Furthermore, in the case of competitive bids, Departmental regulations specifically provide for publishing a notice of the offer of lands for lease "in a newspaper of general circulation in the county in which the lands * * * are situated." 43 CFR 3120.2.2. The notice "will * * * state * * * the terms and conditions of the sale." 43 CFR 3120.2-3.

With regard to over-the-counter lease offers, there is no comparable Departmental regulation providing for notice of the terms of such leases. Accordingly, in the present cases, where there is no evidence that appellant had actual knowledge of the stipulations, and where the public had not been informed by a duly promulgated regulation or other notice published in the Federal Register as to the stipulations required, we find that appellant did not have adequate notice of the disputed stipulations. Accordingly, we hold that the leases issued to appellant were without effect, in the absence of its consent to the additional stipulations, and we hereby vacate oil and gas leases N 35540, N 35541, N 35542, N 35543, and N 35545. 2/

BLM must submit the proposed stipulations to appellant-offeror for acceptance prior to reissuance of the leases. The ambiguous and vague language in the present stipulations should be clarified, so that the lessee may be assured of the limits of their application to the leased lands at any future date. Full justification for the need to impose the stipulations must be given to the appellant-offeror prior to imposition of the stipulations on the leases. In its decision requiring the acceptance of the stipulations, appellant-offeror must be given the right of appeal. If at that time, appellant-offeror declines to accept the leases with the stipulations, and does not appeal, refund of the advance rental must be made.

2/ As we pointed out in Emery Energy, Inc. (On Reconsideration), *supra* at 264, BLM's attempt to require stipulations without notice to an offeror amounts to a counter offer. In this case Security Resources Corporation made a timely objection to the stipulations. However, a deficiency in BLM's notice procedure is cured when the offeror fails to object timely to imposition of new stipulations.

We note, however, that insofar as the lands within the North Fork Little Humboldt WSA are concerned, no lease may properly issue. Consistent with Instruction Memorandum No. 83-237, to the extent lease offer N 35543 embraces land in the WSA, it must be held in suspense "until Congressional action is taken on the President's recommendation." See Ida Lee Anderson, 70 IBLA 259 (1983).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the leases are vacated, and the cases are remanded to BLM for further action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

James L. Burski
Administrative Judge

